



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Dear :

This letter responds to your request for general information about the application of self-dealing with respect to grants by private foundations to intermediary organizations, such as a public charity, where the private foundation has reason to believe that certain government officials will derive benefits from the grant. You posit that the grant would be used by the intermediary organization to convene a conference, including the payment of travel expenses, on matters of global concern attended by representatives from academia, business, journalism, non-governmental organizations, and governments at the private foundation's conference center.

Section 4941(d)(1)(F) of the Internal Revenue Code defines "self-dealing" to include any direct or indirect agreement by a private foundation to make a payment to a government official. However, Treas. Reg. § 53.4941(d)-1(b)(2) provides that

the term "indirect self-dealing" shall not include a transaction engaged in with a government official by an intermediary organization which is a recipient of a grant from a private foundation and which is not controlled by such foundation (within the meaning of subparagraph (5) of this paragraph) if the private foundation does not earmark the use of the grant for any named government official and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the selection of the government official by the intermediary organization. A grant by a private foundation is earmarked if such grant is made pursuant to an agreement, either oral or written, that the grant will be used by any named individual. Thus, a grant by a private foundation shall not constitute an indirect act of self-dealing even though such foundation had reason to believe that certain government officials would derive benefits from such grant so long as the intermediary organization exercises control, in fact,

over the selection process and actually makes the selection completely independently of the private foundation.

This principle is illustrated in Treas. Reg. § 53.4941(d)-1(b)(8), Example 3, as follows:

Private foundation Y made a grant to M University, an organization described in section 170(b)(1)(A)(ii), for the purpose of conducting a seminar to study methods for improving the administration of the judicial system. M is not controlled by Y within the meaning of subparagraph (5) of this paragraph. In conducting the seminar, M made payments to certain government officials. By the nature of the grant, Y had reason to believe that government officials would be compensated for participation in the seminar. M, however, had completely independent control over the selection of such participants. Thus, such grant by Y shall not constitute an indirect act of self-dealing with respect to the government officials.

As described in Treas. Reg. § 53.4941(d)-1(b)(2), a grant by a private foundation to a public charity that is not controlled by the private foundation will not be an act of self-dealing even if the foundation has reason to believe that certain government officials will derive a benefit (such as from the payment of travel expenses and/or from the use of the facility made available to the public charity by the private foundation), as long as the public charity exercises control in fact over the selection process and actually makes the selection of any government officials completely independently of the private foundation.

We hope this information is helpful. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please contact (Identification Number) at () .

Sincerely,

David L. Fish
Acting Manager, Exempt Organizations
Technical Guidance & Quality Assurance